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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/653,805	09/02/2003	Gordon Jeffrey Ulyett	206,228	4517
38137	7590	01/10/2005	EXAMINER	
ABELMAN, FRAYNE & SCHWAB 150 EAST 42ND STREET NEW YORK, NY 10017-5612			LEV, BRUCE ALLEN	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 01/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/653,805

Applicant(s)

ULLYETT, GORDON JEFFREY

Examiner

Bruce A. Lev

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

BRUCE A. LEV  
PRIMARY EXAMINER

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

***Claims 1-21 are rejected*** under 35 U.S.C. **112**, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As concerns claim 1, the phrase "including thereon ***or*** adapted to include" is improper since one or the other should be set forth. Further the "biasing means" is not positively set forth since it is included as being "*for attachment*", therefore rendering the claims as vague and indefinite.

As concerns claims 7 and 8, the phrases "the biasing means is restrained permanently" and "restraining means" render the claims as vague and indefinite since it is unclear if they are the same thing as the "means for attachment" as set forth in claim 1.

As concerns claim 13, the phrase "either ***or*** both the....structure" is vague and indefinite since the "structure" has not been set forth as part of the invention.

As concerns claim 21, the claim is vague and indefinite since "incorporating a biasing means" does not constitute a "means of adapting a cover". Further the phrase "the biasing means" lacks antecedent basis.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

***Claims 1-6, 14-17, and 20-25 are rejected*** under 35 U.S.C. ***102(b)*** as being anticipated by ***Miller 1,959,136***.

***Miller sets forth*** a retractable cover 8 comprising a flexible material portion including means for attachment of a spring biasing means 3 (varying as the length material is extended) which “*can be*” selected from a range of 0.25kg to 50kg; affixing means (inclusive of members 11) for removably restraining the cover in an extended position; and the method of manufacturing and varying thereof.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

***Claims 7-13 are rejected*** under 35 U.S.C. ***103(a)*** as being unpatentable over ***Miller in view of Terrell 2,300,024***.

***Miller sets forth*** the cover, as advanced above, except for the restraining means including a sheath, or a partial sheath, or adhesive or welding means. However, ***Terrell***

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**teaches** the use of a sheath or a partial sheath 22, or restraining means 31 including an adhesive or welding means within a cover apparatus. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the cover of Miller by forming the restraining means including a sheath, or a partial sheath, or adhesive or welding means, as taught by Terrell, in order to more securely removably hold the material to the biasing means.

**Claims 18 is rejected** under 35 U.S.C. 103(a) as being unpatentable over **Miller in view of Terrell further in view of Hausemann et al 4,610,292.**

**Miller in view of Terrell set forth** the cover, as advanced above, except for the affixing means being a hook-and-pile fastener. However, **Hausemann et al teach** the use of a hook-and-pile fastener within a cover apparatus. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the cover of Miller in view of Terrell by forming the affixing means as hook-and-pile fastener, as taught by Hausemann et al, in order to more easily removably hold the material to the structure.

**Claims 19 is rejected** under 35 U.S.C. 103(a) as being unpatentable over **Miller in view of Terrell further in view of Eckels 4,419,982.**

**Miller in view of Terrell set forth** the cover, as advanced above, except for the affixing means being a magnetic fastener. However, **Eckels teaches** the use of a magnetic fastener within a cover apparatus. Therefore, it would have been obvious to

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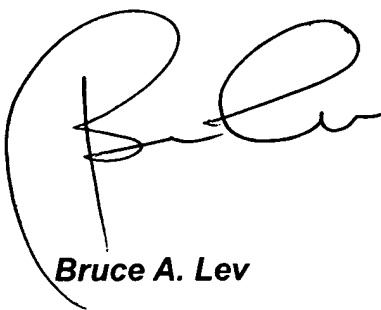
one of ordinary skill in the art at the time the invention was made to modify the cover of Miller in view of Terrell by forming the affixing means as magnetic fastener, as taught by Hausemann et al, in order to more easily removably hold the material to the structure.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce A. Lev whose telephone number is (703) 308-7470.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168.

January 4, 2005

A handwritten signature in black ink, appearing to read 'B. Lev', with a large, stylized loop at the beginning.

**Bruce A. Lev**

**Primary Examiner**

**Group 3600**